IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

S.A.O. No. 71 of 1987 (O&M)
Date of Decision : 14.11.2007

Punjab Singh & Ors.

.....Appellants

Versus

Narinder Singh & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. M.L. Saini, Advocate
for the appellants.

Mr.Sarwan Singh, Sr. Advocate with
Mr. A.S. Panwar, Advocate
for the respondents.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 14513-CII of 2007

For the reasons mentioned in the application, the order dated 1.8.2007 is recalled and the case is restored to its original number.

C.M. stands allowed.

S.A.O. No. 71 of 1987

This second appeal against an order has been filed against the order dated 20.7.1987 passed by the learned Addl. District Judge, Faridkot vide which appeal filed by the appellants against the judgment and decree passed by the learned trial Court, has been ordered to be dismissed as the appellants failed to bring on record the legal representatives of deceased Gurbax Singh, one of the appellants in the case.

The appellants had moved an application for bringing on record the legal representatives of deceased Gurbax Singh whereas the respondents

moved an application for dismissal of the appeal having abated. The learned Addl. District Judge, Faridkot was pleased to dismiss the application moved by the appellant for bringing on record the legal representatives of deceased Gurbax Singh whereas the application moved by the plaintiff respondent was allowed and the appeal was ordered to be dismissed as having abated as the order qua one of the appellants had attained finality.

The plaintiff respondents had brought a suit for declaration to challenge the order dated 19.10.1982 passed by the Collector, Faridkot ordering the possession of land in favour of the defendant appellants. The appellant defendants had filed a suit for redemption of mortgage before the Collector, however, the said application was dismissed as it was held that complicated question of law and facts were involved in the case. Thereafter, the appellants filed a civil suit for redemption of the mortgage. The said suit was decreed by the Civil Court and judgment and decree passed by the learned Civil Court was upheld upto this Court and the defendant appellants were allowed to redeem the property on payment of Rs. 1244/- (Rupees one thousand two hundred and forty four only). It was thereafter the defendant appellants moved an application before the Collector seeking possession of the property by redeeming the land by deposit of Rs. 1244/- (Rupees one thousand two hundred and forty four only). The said application was allowed and an order for possession of land was passed in favour of the appellant defendants. This order of Collector was challenged by the respondent plaintiffs primarily on the plea that the Collector had no jurisdiction to pass an order in view of the bar contained under Section 13 of the Punjab Redemption Mortgages Act. The objection was also raised as the land, the possession of which was ordered, was in fact different one

from qua which the decree was passed. It was on account of the fact that there was consolidation in the village and new land law was allowed in favour of the defendants. The defendant appellants preferred an appeal before the Addl.District Judge, Faridkot. However, he failed to implead the legal representatives of Gurbax Singh, who died during the pendency of the appeal and on account of death of Gurbax Singh that an application was moved by the plaintiff respondents for dismissing the appeal as having abated whereas the appellants had moved an application for bringing on record the legal representatives of Gurbax Singh. The learned Addl. District Judge has been pleased to dismiss the appeal by observing as under :-

> "5. So, in the present case when the applicant could not prove his case and his application of impleading L.R is time barred and application got setting aside of abatement is also time barred, the allegations of the applicants in the application are not proved rather it has been proved that the applicant was knowing about the litigation from the very beginning. Moreover, Gurbaksh Singh was a necessary party and in the case of his death and in case of non-joining of the L.R. of Gurbakash Singh the appeal has abated qua Gurbakash Singh as the relief claimed is indivisible. So, the appeal will abate in toto on the other hand, the learned counsel for the respondent argued that the delay should be condoned and liberal view has been taken by the courts regarding that and referred to 1985 PLR 293 Ram Singh Vs. Masadi Lal. In that case, the appellant shifted to a village other than where the remaining appellants resided but in the present case, the applicant was knowing

about the appeal and the appellant was residing adjacent to his respondent-house. As regards authority AIR 1986 Himachal Pradesh 66 Smt. Rameshwari Devi Vs. Sansar Chand is concerned in that case, the appellant was a widow of advance age and minor girl. He also referred to AIR 1963 Supreme Court 355" Bhagwan Sarup Vs. Mool Chand. I have perused all the authorities mentioned above. The facts of these authorities are quite different than the facts of the present case. Moreover, each case is to be decided on its own facts. So, these authorities are not applicable to the facts of the present case.

6. From the discussion above, the application of applicant for impleading him as L.R. and application for setting aside the abatement are dismissed. When the appeal against Gurbaksh Singh abated as his L.Rs were not brought within the prescribed time. Moreover, claim is indivisible. So, the appeal abated in toto. In the peculiar circumstances of the case the parties are left to bear their own costs. Decree sheet be prepared accordingly."

The learned counsel appearing on behalf of the appellants has challenged the order by placing reliance on the judgment of this Court in the case of ***Padma Wati Vs. Hans Raj and others 1976 PLR 917*** wherein this Court has been pleased to lay down as under :-

"Held, that if all the persons entitled to redeem the property or some of them institute the suit for redemption, and one of them dies during the pendency of the suit, the suit does not abate in the absence of the deceased even if his legal representatives are

not brought on the record."

"Held, that any person who has an interest in or charge upon the property mortgaged is entitled to file the suit for the redemption of the whole of the mortgaged property."

On the other hand, Mr. Sarwan Singh, senior counsel appearing on behalf of the respondents contends by placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Badni (dead) by LRs. and others etc. etc. Vs. Siri Chand (dead) by LRs. and others etc. AIR 1999 Supreme Court 1077***, wherein the Hon'ble Supreme Court has been pleased to lay down as under :-

"We have considered the rival submissions and we are of the view that the High Court was right in coming to the conclusion that the decree was based on a common issue against the appellants in all the six R.S.As. and the failure to bring the legal representatives of one of the deceased-appellants in one R.S.A. will result in abatement of other appeals. Otherwise, there will be conflicting decrees in the event of other R.S.As. being allowed on merits, which cannot be allowed.

7. We have noticed earlier that the common issue for consideration in all the appeals before the High Court was whether the claim of the plaintiff-respondents for possession of the suit land on the basis of adoption was sustainable. The Courts below having found the adoption in favour of the plaintiffs, the consequences will be that the issue of adoption in respect of Shiv Lal's appeal would become final in that R.S.A.,

resulting in the abatement of that R.S.A. as well as other R.S. Appeals to avoid conflicting decrees."

The learned lower appellate Court was right in dismissing the appeal in toto, as appeal qua one of the appellants stood abated.

On consideration of the respective contentions of the parties, I find no force in this appeal. The authority relied upon by the appellant has no application to the facts of the present case as present case was not for redemption of mortgage rather the suit filed by the plaintiff respondent was to challenge an order passed by the Collector vide which the Collector was pleased to pass an order directing handing over the possession to the appellant defendants.

The order passed by the learned Addl. District Judge, therefore, is in consonance with the law laid down by the Hon'ble Supreme Court in the case of ***Badni (dead) by Lrs. and others etc. etc. Vs. Siri Chand (dead) by Lrs. and others etc.***(Supra), therefore, does not call for any interference by this Court.

Dismissed.

14.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**